

SUSAN E. BISHOP, CA STATE BAR NO. 187253
 EMILY J. TEWES, CA STATE BAR NO. 318439
 BERLINER COHEN, LLP
 Ten Almaden Boulevard
 Eleventh Floor
 San Jose, California 95113-2233
 TELEPHONE: (408) 286-5800
 FACSIMILE: (408) 998-5388
susan.bishop@berliner.com
emily.tewes@berliner.com
Attorneys for Defendants
Fidelity Home Energy, Inc., and NorCal Home Systems, Inc.

ROBERTA L. STEELE, SBN 188198 (CA)
 MARCIA L. MITCHELL, SBN 18122 (WA)
 JAMES H. BAKER, SBN 291836 (CA)
 U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
 San Francisco District Office
 450 Golden Gate Avenue, 5th Fl. West
 P.O. BOX 36025
 San Francisco, CA 94102
 Telephone No. (415) 522-3262
James.Baker@eeoc.gov

Attorneys for Plaintiff U.S. Equal Opportunity Employment Commission

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT
 OPPORTUNITY COMMISSION,

Plaintiff,

and

AYESHA FAIZ,

Plaintiff-Intervenor,

vs.

FIDELITY HOME ENERGY, INC., NORCAL
 HOME SYSTEMS, INC., and BRADLEY
 SMITH, an Individual

Defendants.

Case No.: 4:19-cv-01231-JSW

**PETITION AND [PROPOSED] ORDER
 TO AMEND CONSENT DECREE
 (ECF NO. 66)**

In the interest of resolving this matter Plaintiff U.S. Equal Employment Opportunity Commission (EEOC), and Defendants Fidelity Home Energy, Inc. and NorCal Home Systems, Inc. (Defendants), (collectively, Parties) agreed that this lawsuit should be finally resolved by entry of a Consent Decree on December 20, 2019 (ECF 65). On January 14, 2020, the Honorable Jeffrey S. White, United States District Court Judge, ordered that the terms of the Consent Decree (Decree) were fair and reasonable and that it be entered (ECF 66).

Considering the COVID-19 pandemic, local and statewide Shelter In Place (SIP) Orders intended to limit the spread of COVID-19, and the effect of the SIP Orders on Defendant NorCal Home Systems, Inc.'s operations, the Parties hereby stipulate to, and petition the Court to order the following amendments to Sections V, VIII and X only of the Consent Decree entered in this case. The purpose of the amendments is to continue deadlines for compliance with the requirements of the Decree. All other provisions of the Consent Decree approved by this Court on January 14, 2020 (ECF 66) shall remain in full force and effect.

1. SECTION V, PARAGRAPH B OF THE DECREE WILL BE AMENDED TO STATE AS FOLLOWS:

V. EFFECTIVE DATE AND DURATION OF DECREE

B. The Decree shall remain in effect for three (3) years after the date the Order Granting the Petition to Amend Consent Decree is entered by the Court (New Effective Date) and will expire on its own terms.

2. SECTION VIII (A), (D) AND (E) OF THE DECREE WILL BE AMENDED TO STATE AS FOLLOWS:

VIII. SPECIFIC INJUNCTIVE RELIEF

D. Policy and Procedure Concerning Discrimination, Harassment, Retaliation

1. Within ninety (90) days of the New Effective Date, Defendants shall establish policies and internal procedures for receiving and investigating complaints of

1 discrimination, hostile work environment, and retaliation.

2 **2.** The policies shall include:

3 (a) a clear explanation of prohibited conduct under Title VII,
4 including national origin-based discrimination and hostile work environment and examples;

5 (b) an explanation that prohibited conduct may include disparaging
6 remarks or discrimination aimed at or based on the race, color, religion, sex and national origin of a
7 current or potential customer;

8 (c) a requirement that officers, supervisors and managers are
9 required to actively monitor employees' compliance with the company's anti-discrimination or anti-
10 hostile work environment policies, and to report any incidents and/or complaints of discrimination,
11 hostile work environment and/or retaliation that they observe, or of which they become aware;

12 (d) an internal complaint procedure; and,

13 (e) a clear explanation that NorCal shall hold all employees,
14 including officers, management, supervisory, and human resources employees, accountable for
15 engaging in conduct prohibited under Title VII and/or failing to take appropriate proportional action
16 sufficient to address discrimination, hostile work environment or retaliation.

17 **3.** The internal complaint procedure shall, at a minimum, clearly state
18 that:

19 (a) an employee who believes that he or she has suffered
20 discrimination, a hostile work environment or retaliation may initiate an internal complaint using the
21 internal complaint procedure, or may file an external complaint to any appropriate person or agency,
22 or both;

23 (b) employees may initiate an internal complaint verbally or in
24 writing to any appropriate person, and that no special form is required;

25 (c) NorCal will take every reasonable step to promptly resolve any
26 complaints;

27 (d) within five (5) days of a complaint, NorCal will promptly
28 commence an investigation that shall be conducted by a person who is not connected with the

1 complaint, and NorCal will complete its investigation within fifteen (15) days of the complaint;

2 (e) NorCal will communicate with the complainant in writing
3 regarding the status of the complaint, investigation, results of the investigation and any remedial
4 action taken within five (5) days of completing its investigation;

5 (f) NorCal shall not tolerate retaliation against any employee for
6 complaining, assisting, or participating in the internal complaint procedure or any external complaint
7 procedure;

8 (g) NorCal will memorialize verbal complaints, and maintain
9 written records of all investigatory steps, including interview notes, findings or conclusions of the
10 investigation and any remedial actions taken;

11 (h) the internal complaint procedure does not replace the right of
12 any employee to file a charge or complaint of discrimination, harassment or retaliation under any
13 available municipal, state, or federal law; and,

14 (i) if an allegation of discrimination or retaliation against any
15 employee is substantiated, then such conduct will result in appropriate and proportionate discipline,
16 up to and including discharge.

17 4. Within ninety (90) days of the New Effective Date, NorCal shall
18 provide the EEOC with a copy of the policies and procedures described in this Section, including the
19 revised internal complaint procedures. Upon receipt, the EEOC shall have fifteen (15) days to
20 review and/or comment on the policies and procedures. No later than one hundred twenty (120)
21 days after the New Effective Date, NorCal shall disseminate the policies and procedures described in
22 this Section to its employees, including management, supervisory, and human resources employees.

23 5. NorCal shall submit to the EEOC, for its review and consideration no
24 later than thirty (30) days before adoption, any proposed material modifications to the policies
25 referenced in this Section. The EEOC will notify NorCal within fifteen (15) days of receipt of the
26 proposed modifications if it has any concerns about the proposed modifications. EEOC agrees to
27 review the proposed modifications in good faith.

28 6. For purposes of this Section, “material modifications” shall refer to

any modifications to the substantive provisions referenced in Paragraphs VIII(D)(2) and VIII(D)(3),
above.

E. Training

1. All non-supervisory employees shall be required to attend a live training program, which may be conducted over virtual conferencing if necessary to comply with safety and health orders, annually during the duration of this Decree. The program shall be at least one (1) hour hours in length and shall include:

(a) instruction on equal employment opportunity rights and responsibilities, including, but not limited to, Title VII's prohibitions against national-origin based discrimination, hostile work environment or retaliation, and NorCal's policies and procedures for reporting and handling complaints of discrimination, hostile work environment or retaliation;

(b) a component of "respectful workplace training," i.e., instruction intended to educate employees about conduct that is unacceptable in the workplace, including behavior which, if left unchecked, may rise to the level of actionable discrimination, or hostile work environment;

(i) such training shall specifically educate employees that impermissible behavior includes rejecting or screening out a customer or potential customer on the basis of their actual or perceived race, color, religion, sex or national origin;

(c) a component of "bystander intervention training," i.e., instruction that will emphasize that a co-worker who observes harassment, or hostile work environment or discrimination should report it to management; and

(d) NorCal shall ensure that the training is developed and administered by instructors with expertise in anti-harassment and anti-discrimination matters. The initial training of non-supervisory employees shall be concluded within one hundred twenty (120) days of the New Effective Date.

2. All supervisory employees, including managers and officers shall be required to attend a live harassment training program annually during the duration of this Decree. The program will be at least three (3) hours in length and, in addition to the topics listed in Section

VIII(E)(1) above, shall include training on recognizing discrimination and a hostile work environment; taking preventative and corrective measures against discrimination and a hostile work environment; the responsibilities of managers under equal employment opportunity laws; properly handling and investigating complaints of discrimination and/or hostile work environment in a neutral manner, and how to prevent retaliation. The initial training of supervisory employees must be concluded within one hundred and twenty (120) days of the New Effective Date and must be video-recorded.

3. Thereafter, during the duration of the Decree, all employees newly-hired or promoted from a non-supervisory to a managerial or supervisory position shall receive the harassment training described in Section VIII(E)(1)-(2) within sixty (60) days of hire or promotion. If no live training is scheduled to occur within sixty (60) days of the hire or promotion, the employee may satisfy the training requirement by watching a video recording of the prior live training. Employees required to watch the video recording shall be provided an opportunity to submit questions to, and to receive answers from, a human resources person familiar with the materials covered during the live training.

4. NorCal shall provide copies of all policies referenced in Section VIII(E) to new employees within thirty (30) days of hire.

5. NorCal shall track in writing or electronically all employees required to attend, and who do attend a training program described in Section VIII(E).

6. Within (60) days after the New Effective Date, NorCal shall identify all proposed trainers for the training to be provided pursuant to Sections VIII(E)(1) through VIII(C)(2) of this Decree. The EEOC will raise any objections to the proposed trainers within fifteen (15) days of identification.

7. Within ninety (90) days after the New Effective Date, NorCal shall submit to the EEOC a description of all training to be provided pursuant to Section VIII(E)(1) through VIII(E)(2) of this Decree and an outline of the curriculum developed for the trainees. EEOC may provide comment within fifteen (15) days regarding any proposed revisions to the trainings.

8. For all subsequent training sessions, NorCal shall provide the EEOC

1 with copies of all training materials (if materially changed in any way) no later than thirty (30) days
 2 prior to use. The EEOC will advise NorCal of any objections or comments to proposed training
 3 materials within fifteen (15) days.

4 **9.** For purposes of this Section, “materially” shall refer to any
 5 modifications that change the substantive provisions referenced in Paragraphs VIII(E)(1) through
 6 VIII(E)(2) of this Section.

7
 8 **3. SECTION X OF THE DECREE WILL BE AMENDED TO STATE AS FOLLOWS:**

9 **A.** In addition to the notice and reporting requirements above, NorCal shall
 10 provide the following reports to the EEOC by e-mail to [EEOC-](mailto:EEOC-SFDO_COMPLIANCE@eoc.gov)
 11 [SFDO_COMPLIANCE@eoc.gov](mailto:Sfdo_Compliance@eoc.gov):

12 **1.** Within one hundred eighty (180) days after the New Effective
 13 Date, NorCal shall submit to EEOC an initial report containing the following information
 14 regarding NorCal’s actions under this Decree:

15 **(a)** a copy of the positive letter of reference for Ms. Faiz, as
 16 described in Section VIII(B)(1);

17 **(b)** a copy of its discrimination, hostile work environment and
 18 retaliation policies required under the terms of this Decree, including the internal complaint and
 19 investigation procedures;

20 **(c)** a description of any changes or modifications to any of
 21 NorCal’s customer or lead management databases as described in Section VIII(C), including the
 22 dates and purpose of the modification and the names and most recent contact information of
 23 anyone who modified the database;

24 **(d)** a copy of the data dictionary specified in Section VIII(C);
 25 and,

26 **(e)** a statement confirming all training required under this
 27 Decree has been initiated and/or completed.

28 **2.** NorCal shall also provide semi-annual reports throughout the term

of this Decree containing the following information (subparts (a) – (e), below) regarding NorCal’s actions under this Decree. The first report, described in detail above as the “initial report,” shall be submitted within one hundred eighty (180) days of the New Effective Date; subsequent reports shall be submitted every one hundred eighty (180) days throughout the duration of the Decree.

(a) Complete attendance lists for all training sessions required under this Decree that took place during the previous six months; and,

(i) The list shall include for each individual, their hire date, job title, supervisory status, and the date of their attendance at the training.

(b) A report detailing any national origin-based harassment or hostile work environment complaints made to, investigated by, or resolved by NorCal in the previous six months. This report shall include, at a minimum: (i) the names and contact information of the complainants and witnesses; (ii) the nature of the complaint; (iii) the names of the alleged perpetrators of national origin-based discrimination or hostile work environment; (iv) the dates of the alleged national origin-based discrimination or hostile work environment; (v) a brief summary of how each complaint was resolved; and (vi) the identity of each NorCal’s employee(s) who investigated or resolved each complaint.

(c) A description of any changes or modifications to any of its customer or lead management databases, including the dates and purpose of the modification and the names and most recent contact information of anyone who modified the database.

(d) A signed certification that NorCal has satisfied the posting requirements of Section IX for the preceding one hundred eighty (180) days, and that the posting has not been defaced, or if it had been defaced, that it has since been corrected.

(e) A description of any purchase or transfer of all or a portion of NorCal’s assets, including a description of the purchaser or transferee and the date(s) of any transfer or purchase.

3. NorCal shall provide the information mandated in Section X(A)(1) and Section X(A(2)(a)-(c) in one of the following searchable formats: Excel, Access, or ASCII

delimited ("csv"). Regardless of the format, the first row shall consist of the field (or variable) names. There must be one column for each field (variable) requested. First and last names must be provided as separate fields (variables).

All parties, through the undersigned, respectfully apply for and consent to the entry of this Petition as an Order of this Court.

Dated: August 20, 2020

BY: /s/ Roberta L. Steele
 ROBERTA L. STEELE
 Regional Attorney
 MARCIA L. MITCHELL
 Supervisory Trial Attorney
 JAMES H. BAKER
 Trial Attorney

SHARON FAST GUSTAFSON
 General Counsel

ROBERTA A. CANINO
 Acting Deputy General Counsel

GWENDOLYN Y. REAMS
 Associate General Counsel

U.S. EQUAL EMPLOYMENT
 OPPORTUNITY COMMISSION

Office of the General Counsel
 131 "M" Street NE
 Washington, D.C. 20507

Attorneys for Plaintiff EEOC

Dated: August 20, 2020

BY: /s/ Susan E. Bishop
 Susan E. Bishop
 BERLINER COHEN, LLP

*Attorneys for Defendants Fidelity Energy Home,
 Inc. and NorCal Home Systems, Inc.*

LOCAL RULE 5-1(i)(3) ATTESTATION

I, James H Baker, am the ECF User whose ID and password are being used to file the foregoing document. In compliance with Local Rule 5-1(i)(3), I hereby attest that Roberta Steele and counsel for Defendant concurred in this filing.

Dated: August 20, 2020

By: /s/ James H. Baker
 JAMES H. BAKER

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[PROPOSED] ORDER

IT IS HEREBY ORDERED THAT:

The terms of this Petition to Amend Consent Decree are fair and reasonable. As such, the provisions of the foregoing Amendments to the Consent Decree are hereby approved and compliance with all provisions thereof is HEREBY ORDERED. The Court hereby retains jurisdiction over this Consent Decree until its termination, as determined by this Court.

IT IS SO ORDERED.

Dated: _____

HON. JEFFREY S. WHITE
United States District Court Judge